APPENDIX

The pertinent provisions of the contract between petitioner and the United States government are as follows:

> ARTICLE 1. *Statement of work.*—The contractor shall furnish all labor and materials, and perform all work required for repairs to the north and south jetties at the entrance to Newburyport Harbor, Massachusetts, as described in paragraph 2 of the specifications hereto attached, for the consideration of Two Dollars and Eighty-Eight Cents ($2.88) per ton of 2,000 pounds for rubblestone furnished and placed in the jetties, in strict accordance with the specifications, schedules, and drawings, all of which are made a part hereof * * *
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> * * * * *
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> The work shall be commenced within twenty (20) calendar days after the date of receipt by the contractor of notice to proceed, and shall be completed within three hundred and sixty-five (365) calendar days after the date of receipt of said notice to proceed, exclusive of the period between January 1 and February 29, inclusive.
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> ARTICLE 3. *Changes.*—The contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings and (or) specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjust-

ment shall be made and the contract shall be modified in writing accordingly. * * * Any claim for adjustment under this article must be asserted within ten days from the date the change is ordered, unless the contracting officer shall for proper cause extend such time, and if the parties can not agree upon the adjustment the dispute shall be determined as provided in Article 15 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the prosecution of the work so changed.

ART. 4. *Changed conditions.*—Should the contractor encounter, or the Government discover, during the progress of the work, subsurface and (or) latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, the attention of the contracting officer shall be called immediately to such conditions before they are disturbed. The contracting officer shall thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the drawings or indicated in the specifications, he shall at once, with the written approval of the head of the department or his representative, make such changes in the drawings and (or) specifications as he may find necessary, and any increase or decrease of cost and (or) difference in time resulting from such changes shall be adjusted as provided in Article 3 of this contract.

* * * * *

ART. 9. *Delays—Damages.*— * * * If the Government does not terminate the right of the contractor to proceed, the contractor shall continue the work, in which

event the actual damages for the delay will be impossible to determine and in lieu thereof the contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed or accepted the amount as set forth in the specifications or accompanying papers and the contractor and his sureties shall be liable for the amount thereof: Provided, That the right of the contractor to proceed shall not be terminated or contractor charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes: Provided further, That the contractor shall within ten days from the beginning of any such delay notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay, and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal, within thirty days, by the contractor to the head of the department concerned, whose decision on such appeal as to the facts or delay shall be final and conclusive on the parties hereto.

* * * * *

ART. 15. *Disputes.*—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by

the contractor within thirty days to the head of the department concerned, whose decision shall be final and conclusive upon the parties thereto as to such questions of fact. In the meantime the contractor shall diligently proceed with the work as directed.

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SPECIFICATIONS

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3. COMMENCEMENT, PROSECUTION, AND COMPLETION: * * *

In case of failure on the part of the contractor to complete the work within the time thus determined and agreed upon for its completion plus any extensions of time duly granted under Articles 3, 4, 5 and 9 of the contract, the contractor shall pay the Government as liquidated damages the sum of $25.00 for each calendar day of delay until the work is completed or accepted.

No allowance will be made for failure of a bidder correctly to estimate the difficulties attending the execution of the work.

* * * * *

7. PHYSICAL DATA: The mean range of tide is 7.9 feet. The work is exposed to severe easterly storms. There are no bridges or other obstructions between the proposed work and the sea. The tidal currents have an average velocity of 2.1 miles per hour, which might have some effect on contract operations.

Standard government instructions to bidders to which the invitation for bids specifically referred contains the following paragraph:

Standard Government Instructions to Bidders

(Construction and Supplies)

1. *Preparation of bids.*—Unless otherwise directed in the invitation, bids shall be submitted in triplicate. Forms furnished, or copies thereof, shall be used, and strict compliance is necessary with the requirements of the invitation, these instructions, and the instructions printed on the forms. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the execution of the proposed contract, including local conditions, uncertainty of weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. Copies of the bids shall be identical. The proper blank spaces in the bid and guaranty forms shall be suitably filled in.

U. S. GOVERNMENT PRINTING OFFICE: 1944